

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

LANDMARK LEGAL FOUNDATION

Plaintiff,

vs.

**U.S. ENVIRONMENTAL PROTECTION
AGENCY**

Defendant.

Civ. Act. No. 12-1726 (RCL)

**DEFENDANT'S REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S REQUEST FOR
AN EXTENSION OF TIME TO FILE ITS MOTION FOR SUMMARY JUDGMENT**

The Agency has an obligation to perform a reasonable search for disclosable documents. The extra time is being requested so that the Agency can fulfill its statutory obligation, completely respond to the Plaintiff's request and verify that all potentially responsive records related to rulemaking are in fact reviewed for responsiveness. It is therefore an enigma that this Plaintiff would object to the Agency asking for two weeks to make sure that its response is complete. Responding to this request has required substantial staff time as there is no way to determine what is or is not responsive without someone reading each potentially responsive document in conjunction with Landmark's request. Once this initial determination of responsiveness is complete, the Agency still has to segregate factual information, redact, number and process the documents before production.

The Agency has acted in good faith. EPA has provided Landmark with over 1100 pages of documents released in full and over 1600 pages of documents released with redactions. In its April production, EPA agreed to provide approximately 460 pages of attachments to two emails,

documents EPA-32 and EPA-33 that were third party comments. Upon request by Landmark, EPA provided the 460 pages of comments despite the fact that Landmark's request specifically excluded public comments. In contrast, Landmark has been unwilling to use the "meet and confer" to narrow the scope of any briefing, which has required taking Agency time to respond to questions without any subsequent narrowing of the scope of the case. Remaining issues include Landmark's challenge to EPA's search and Landmark's challenge to every single record that was redacted or withheld. Landmark's vague, needle-in-a-haystack request similarly has required that the Agency sift through thousands of potentially responsive documents related to a broad swath of Agency activities to find the few documents that actually are responsive to Landmark's request.

The Agency has also acted with good faith with regard to the secondary account of former Administrator Lisa Jackson. Since the widespread use of email has become commonplace, EPA Administrators have been assigned two email accounts: a public account and a secondary account. The email address for Administrator Lisa Jackson's public account was posted on the EPA's website and was used by hundreds of thousands of Americans to send messages to the Administrator. This account was maintained and monitored by staff, and the emails are processed as official correspondence as appropriate. The secondary account is an everyday, working email account of the Administrator to communicate with staff and other government officials. This secondary email account is used for practical purposes. Given the large volume of emails sent to the public account- more than 1.5 million in fiscal year 2012, for instance- the secondary email account is necessary for effective management and communication between the Administrator and colleagues.

Consistent with EPA's past practice, the name on this secondary account had been redacted in the February and March releases under Exemption 6 and marked *Administrator* to clearly identify the records as being to or from the Administrator. This was because the Administrator had a significant personal privacy interest in preventing the burden of unsolicited emails and harassment. However, due to the fact

that in the interim Administrator Jackson left the Agency, the privacy interest in her secondary email account had diminished at the time of Plaintiff's request to remove these redactions. The parties agreed that the supplemental release would be made by April 12, 2013. However, despite multiple communications, the EPA was unable to reach agreement with the Plaintiff to narrow the scope of any remaining issues.

For the reasons cited above, Defendant requests that its request for an extension of time to file its motion for summary judgment on May 15, 2013, be granted.

Respectfully submitted,

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/s/

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